

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DALE E. HARPER,)
vs.)
Plaintiff,)
WOODWARD COUNTY BOARD)
OF COUNTY COMMISSIONERS,)
et al.,)
Defendants.)

Case No. CIV-11-0996-HE

ORDER

Plaintiff Dale E. Harper, a state prisoner appearing *pro se* and *in forma pauperis*, filed this § 1983 action against multiple defendants alleging violations of his constitutional rights. Magistrate Judge Bernard M. Jones, to whom the matter has been referred consistent with 28 U.S.C. §636(b)(1)(B) and (C), has issued multiple Reports and Recommendations addressing plaintiff's remaining claims in this action. The court has granted plaintiff several extensions within which to file his objections, attempting to accommodate his recent changes of address, and has had the clerk of court resend several Reports and Recommendations to ensure their receipt by plaintiff. *See* Doc. Nos. 326, 334.

In the first Report and Recommendation issued on May 17, 2016, Doc. #319, Magistrate Judge Jones recommends that defendant Gary Stanley's partial motion to dismiss be granted, that the claims asserted against him in Count II of the second amended complaint be dismissed for failure to state a claim upon which relief may be granted and that the claims asserted against defendants Adams and Mitchell in Count II be dismissed pursuant to 28

U.S.C. §§ 1915(e)(2)(B)(ii); 1915A(b)(1) and 42 U.S.C. § 1997e(c)(1). In the second Report and Recommendation issued the same date, Doc. #320, the magistrate judge recommends that a motion to dismiss filed by defendants Barrett Storm and Mike Morton be granted and plaintiff's claims against these defendants be dismissed without prejudice.

Plaintiff failed to file any specific objections to the magistrate judge's May 17, 2016, Reports and Recommendations. He did file a pleading entitled "Objection" on July 5, 2016, which plaintiff stated was to function as his notice of appeal if the court agreed with the magistrate judge's decision. Plaintiff also asserted that, due to his medical condition, the case should be stayed until he was physically capable of paying for documents required to file his post-conviction motions. While the court did not stay the action to allow plaintiff to pursue state habeas relief, it did grant him an extension of time to object to the Reports and Recommendations because of the circumstances alleged. *See* Doc. #328. Plaintiff did not subsequently file any objections to the May 17 Reports and Recommendations. He thereby waived his right to appellate review of the factual and legal issues they addressed. Casanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010); *see* 28 U.S.C. §636(b)(1)(C).

On July 13, 2016, Magistrate Judge Jones issued his final Report and Recommendation, in which he recommends that plaintiff's claims against defendant Adams be dismissed without prejudice for failure to effect timely service under Fed. R. Civ. P. 4(m). Plaintiff responded with an objection stating that the proposed dismissal is an abuse of discretion. The court disagrees. Plaintiff never issued summons to defendant Adams and failed to respond to the magistrate judge's order to show cause. He has offered no

explanation for his failure to even attempt to serve defendant Adams. For these and the other reasons discussed by the magistrate judge in his Report and Recommendation, the court concludes the dismissal without prejudice of plaintiff's claims against defendant Adams is warranted under Rule 4(m).

Accordingly, the court adopts Magistrate Judge Jones's Reports and Recommendations [Doc. Nos. 319, 320, 329] and grants defendant Gary Stanley's partial motion to dismiss [Doc. #304] and defendants Barrett Storm and Mike Morton's motion to dismiss [Doc. #311]. Plaintiff's claims in Count II of the second amended complaint against defendant Stanley are dismissed for failure to state a claim upon which relief may be granted. His claims in Count II against defendants Adams and Mitchell are dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii); 1915A(b)(1) and 42 U.S.C. § 1997e(c)(1). Finally, plaintiff's claims against defendants Morton, Storm and Adams are dismissed without prejudice.

The case is now concluded with respect to all claims and parties.

IT IS SO ORDERED.

Dated this 25th day of August, 2016.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE